

Answers to your questions about permanent disability benefits

This fact sheet will help you understand workers' compensation permanent disability benefits. Permanent disability is any lasting disability from your work injury or illness that affects your ability to earn a living. If your injury or illness results in permanent disability you are entitled to permanent disability (PD) benefits, even if you are able to go back to work.

Q: Do I need to fill out the claim form (DWC 1) my employer gave me?

A: Yes, if you want to make sure you qualify for all benefits. Your employer must give you a DWC 1 claim form within one day of knowing you were injured. Filling out the claim form opens your workers' comp case. State law also lays out benefits beyond the basics you may qualify for once you file the claim form with your employer. Those benefits include, but are not limited to:

- o A presumption that your injury or illness was caused by work if your claim is not accepted or denied within 90 days of giving the completed claim form to your employer
- o Up to \$10,000 in treatment under medical treatment guidelines while the claims administrator considers your claim
- o An increase in your disability payments if they're late
- o A way to resolve any disagreements that might come up between you and the claims administrator over whether your injury or illness happened on the job, the medical treatment you receive and whether you will receive permanent disability benefits.

If you do not file the claim form within a year of your injury you may not be able get benefits.

Q: What if my employer didn't give me the DWC 1 claim form?

A: Ask your employer for the form or call the claims administrator to get it. The claims administrator is the person or entity handling your employer's claims. The name, address and phone number of this person should be posted at your workplace in the same area where other workplace information, like the minimum wage, is posted. You can also get the form from the Division of Workers' Compensation (DWC) Web site at www.dir.ca.gov/dwc. Click on "forms."

Q: Who determines if I should get permanent disability benefits? How is that done?

A: A doctor determines if your injury or illness caused permanent disability (PD). The doctor's report is then turned into a PD rating. The process used to turn the doctor's report into a rating can vary depending on your date of injury and other factors. The PD rating determines the benefits you'll receive.

After your doctor decides your injury or illness has stabilized and no change is likely, permanent disability is evaluated. At that time, your condition has become permanent and stationary (P&S). Your doctor might use the term maximal medical improvement (MMI) instead of P&S.

Once you are P&S or have reached MMI, your doctor will send a report to the claims administrator telling them whether you have any PD. The doctor also determines if any of your disability was caused by something other than your work injury. For example, a previous injury or other condition. This is called apportionment.

The insurance company may ask you to fill out a form describing your disability.

Q: What if I don't agree with the doctor?

A: If you or the claims administrator disagrees with your doctor's findings you can be seen by a doctor called a qualified medical evaluator (QME). You request a QME list (called a panel) from the Division of Workers' Compensation (DWC) Medical Unit. The claims administrator will send you the forms to request a QME. Your employer will pay for the cost of the QME exam. You have 10 days from the date the claims administrator tells you to begin the QME process to submit your request form to the DWC Medical Unit. If you do not submit the form within 10 days, the claims administrator will do it for you and will get to choose the kind of doctor you'll see.

There are other specific and strict timelines you must meet in filing your QME forms or you will lose important rights. Read DWC Information and Assistance (I&A) Unit guide 2 for more information.

When you receive the list of QMEs from the DWC Medical Unit you have to select a doctor, set up an exam and tell the claims administrator about your appointment. If you do not make the appointment within 10 days, the claims administrator may pick the doctor and make the appointment for you.

If you have an attorney, he or she can help you pick a QME or you can be evaluated by an agreed medical evaluator (AME). An AME is the doctor your attorney and the claims administrator agree on to do your medical examination. Discuss your options with your attorney.

Q: What is a PD rating and how is it calculated?

A: First, after your examination, the doctor will write a medical report about your impairment. Impairment means how your injury affects your ability to do normal life activities. The report includes whether any portion of your disability was caused by something other than your work injury. The doctor's report ends with an impairment number.

Next, the impairment number is put into a formula to calculate your percentage of disability. Disability means how the impairment affects your ability to work. Your occupation and age at the time of your injury and your future earning capacity are all also included in the calculation.

Then, any portion of your disability caused by something other than your work injury is taken out of the calculation.

Your disability will then be stated as a percentage. Your percentage of disability equals a specific dollar amount, depending on the date of your injury and your average weekly wages at the time of injury. A rating specialist from the DWC Disability Evaluation Unit (DEU) may help calculate your rating.

If you were injured on or after Jan. 1, 2005 your PD award may be increased or decreased by 15 percent, depending on whether you work for an employer with 50 or more employees and your employer offers -- and you accept or decline -- regular, alternative or modified work.

Q: How is PD paid?

A: Once your doctor says you have permanent disability, the claims administrator will estimate how much you should receive and begin making payments to you, even if the final percentage of disability has not been calculated. PD benefits are paid in addition to temporary disability (TD) benefits you received. The claims administrator must begin paying your permanent disability within 14 days after TD ends and continue the payments until a reasonable estimate of your disability amount has been paid. If you have not missed any work, PD payments are due from the date the doctor says you are P&S. PD benefits continue to be paid every two weeks on a day picked by the insurance company until a reasonable estimate of your disability amount has been paid. When the actual amount of PD due has been determined, the amount over the estimate must be paid.

Q: How is my claim finally resolved?

A: After the amount of PD in a claim is determined, there is usually a settlement or award for benefits. This award must be approved by a workers' compensation judge. If you have an attorney, your attorney should help you obtain this award. If you don't have an attorney, the claims administrator should help you obtain the award. You can also get help from the I&A officer at the local Workers' Compensation Appeals Board office. If your doctor said further medical treatment for your injury or illness might be necessary, the award may provide future medical care.

There are two types of settlements. A settlement is mutually agreed on by you and the claims administrator.

You can resolve your whole claim through one lump sum settlement called a compromise and release (C&R). A C&R may be best when you want to control your own medical care and/or you want a lump sum payment for your permanent disability. A C&R usually means that after you get the lump sum payment approved by the workers' compensation judge, the claims administrator will not be liable for any further payments or medical care.

You can also agree to a settlement called a stipulation with request for award (stip). A stip usually includes a sum of money and future medical treatment. Payments take place over time. A judge will review the agreement.

If you cannot agree to a settlement with the claims administrator, you can go before a workers compensation judge, who will decide your permanent disability award. A judge's finding is called a findings and award (F&A). The F&A generally consists of an amount of money and a provision for the claims administrator to pay for approved future medical treatment.

If you need more information, first contact the claims administrator handling your claim. If you need one of the Information & Assistance (I&A) guides or other help, call an I&A office or attend a workshop for injured workers. The local I&A phone numbers are attached to this fact sheet. You can also get information on local workshops and download the guides from the Web at www.dir.ca.gov/dwc.

The information contained in this fact sheet is general in nature and is not intended as a substitute for legal advice. Changes in the law or the specific facts of your case may result in legal interpretations different than those presented here.